

COPY

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1 EQUAL EMPLOYMENT * IN THE
2 OPPORTUNITY COMMISSION, * UNITED STATES
3 Plaintiff, * DISTRICT COURT
4 vs. * FOR THE
5 WARFIELD-ROHR CASKET * DISTRICT OF MARYLAND
6 COMPANY, INC., * CIVIL ACTION NUMBER:
7 Defendant. * WMN-01-2872

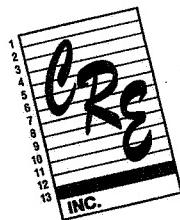
8 * * * * *

9 DEPOSITION OF:

10 WILLIAM HOWARD AYRES,

11 was taken on Thursday, March 21, 2002, commencing
12 at 9:19 a.m., at the Equal Employment Opportunity
13 Commission, 10 South Howard Street, Third Floor,
14 Baltimore, Maryland, before Carla J. Briggs, CSR,
15 RMR, CRR, Notary Public.

16 * * * * *



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1 A. My brother-in-law.

2 Q. Your brother-in-law. Okay. So it's
3 your wife's -- related to your wife?

4 A. Wife's brother.

5 Q. Okay. In what capacity did he work at
6 the company?

7 A. He was a bookkeeper at the time.

8 Q. Did you have to terminate him?

9 A. Yes.

10 Q. And what was the reason for
11 terminating him?

12 A. We just couldn't work together. It's
13 a personal thing between us.

14 Q. Did he have any ownership in the
15 company?

16 A. He might have had a little bit at the
17 time. I'm not absolutely positive. I think he
18 did have some. And at that time, I think we both
19 had a very small amount.

20 Q. So this is your notes of what you
21 created prior to talking to Mr. Kuehnl. Did

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1 you -- why did you prepare these notes? I mean
2 were you -- just tell me why.

3 A. Because I wanted to include everything
4 that I had to say to him and make sure I said
5 them accurately to him.

6 Q. Okay. And how many days -- or let me
7 ask it this way. How soon before the actual date
8 that you told him you were going to terminate him
9 had you prepared these notes?

10 A. Probably just a couple of days.

11 Q. Did you discuss it with anyone prior
12 to actually terminating Mr. Kuehnle?

13 A. Probably the morning of.

14 Q. Who did you discuss it with?

15 A. Probably Mike Osmeyer and John
16 Rosenberger.

17 Q. Are you certain of that?

18 A. The morning of probably, yes.

19 Q. You're actually certain that you
20 talked to them the morning of the termination?

21 A. Right.

1 Q. What did you mean when you wrote that
2 down, "can't afford you"?

3 A. We had had some off years with the
4 company because of loss of business. And after
5 consulting with an accountant at year-end of
6 2000 -- 1999 was not a good year for us and it
7 didn't look like 2000 was going to be any better.
8 And the accountant suggested that we had to take
9 our overhead down some, so I looked for the fat
10 in the company.

11 Q. What was the name of the accountant?

12 A. Carl Silex.

13 Q. How do you spell that?

14 A. S-I-L-E-X.

15 Q. Now, did he suggest ways to cut the
16 overhead?

17 A. He just said we should do something
18 with our overhead. It was getting out of line
19 for the decrease in the business we've had.

20 Q. Now, what about the decrease in
21 business? What was the cause of the loss of

1 A. That's what it says.

2 Q. -- "two years ago when we hired Matt
3 that you and Liz could run room by yourself." Is
4 that what that says?

5 A. That's exactly what it says.

6 Q. ~~It might be better if you read it~~
7 because it's your handwriting, but -- I'll go
8 ahead and read it.

9 A. Do you want me to read it?

10 Q. If I read a word that's not right, let
11 me know.

12 A. I'll read it. Do you want me to read
13 it?

14 Q. Okay. What's in the big
15 parenthetical?

16 A. The big what?

17 MR. HIRSCH: The parentheses.

18 A. Oh. That's why she's backing off.

19 ~~She don't want to say it.~~

20 "You passed remarks like 'What does he
21 want me to do? Shove a broomstick while I'm

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1 working and sweep the floor?'"

2 Q. Okay. So --

3 A. Well, do you want to know where he
4 wanted me to stick the broomstick?

5 Q. No. But this is a remark you made a
6 note of because --

7 A. That's what he passed the remark to.

8 Q. At what time? Is this something he --

9 A. At the time of the discussion over
10 whether we should hire another trimmer or he
11 should do the job.

12 Q. Okay. And do you recall when that
13 discussion took place?

14 A. With him when he said that?

15 Q. Yes.

16 A. It never happened to me. It happened
17 to Mike Osmeyer.

18 Q. Okay.

19 A. And in his anger over what I expected
20 him to do.

21 Q. So Mike Osmeyer's having a

1 conversation with him about what you expect him
2 to do and he says this to Mike?

3 A. Yes.

4 Q. Is that what happened?

5 A. Yes.

6 Q. So when you were sitting down with Mr.
7 Kuehn1 and you're going over these points -- and
8 I'm calling them points. That's my word. And if
9 that's wrong, let me know -- are these your
10 talking points, so to speak?

11 A. Yes.

12 Q. Did you actually confront him with
13 having said this remark?

14 A. Yes.

15 Q. What was his response to you?

16 A. He never replied one way or the other.
17 He never denied it.

18 Q. Okay. With regard to hiring Matt
19 Moore, how was it that that came about? I think
20 you testified that basically, when you hired him,
21 it was your belief, at least as reflected in

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1 these notes, that you didn't think that he needed
2 to be hired. So how was it --

3 A. He needed to be hired, you said?

4 Q. You didn't think he needed to be hired
5 because you thought that they could run the room
6 by themselves.

7 A. I knew they could room it by
8 themselves.

9 Q. So how was it that Matt was hired?
10 Why?

11 A. Because Mr. Kuehn'l insisted that he
12 have someone to help him.

13 Q. And how did Matt come into the
14 building to be hired?

15 A. I believe Mr. Kuehn'l placed the ad in
16 his local newspaper.

17 Q. Okay.

18 A. I don't even know whether it's the
19 county news or something like that. I was
20 against Mr. Kuehn'l hiring Matt -- hiring anyone.

21 Q. So did Mr. Kuehn'l put the ad in the

1 Q. You don't remember? Okay. That's
2 fine. So to your recollection, were you angry

3 At Mr. Kuehn'l during this time that
4 you decided that he had to go? Did you have a
5 problem with him? I guess I've asked you two
6 questions, so let me stick with the first
7 question. Were you angry at him?

8 A. I can't say I was.

9 Q. Did something happen that sort of blew
10 up that said "That's it, I've got to get rid of
11 him," that made you decide that this is the time
12 he had to go?

13 A. Yeah.

14 Q. What happened?

15 A. The same petty bickering that happened
16 with Mike Eisenhart was happening again with Matt
17 Moore, and this time not only Matt Moore. It was
18 Elizabeth. Both of them.

19 Q. Okay. Had Liz ever complained before?

20 A. Not much until about a year before
21 then.

1 Q. A year before the time you decided he
2 had to go?

3 A. Yeah.

4 Q. Okay. What did she complain about?

5 A. His work ethics, how he wasn't working
6 and they were working.

7 Q. And did she complain to you directly?

8 A. Yes.

9 Q. And what did you say to her?

10 A. "He's in charge of the room."

11 Q. Okay. And did she say anything else?

12 A. Both of them kept on complaining more
13 and more about him not working; letting them work
14 and him not working.

15 Q. Okay. Well, let's look at No. 5. I'm
16 almost through the first page. This says "With
17 the little bit of work in the room only comes to
18 1.6 caskets a day." Now, why did you write that?

19 A. Because that's all he was producing.
20 That's all they were -- all three of them were
21 producing.

1 MR. HIRSCH: She's asking why you
2 wrote the note.

3 Q. Yeah. Did you do it --

4 A. This note here?

5 Q. Yeah.

6 MR. HIRSCH: Why you wrote the note.

7 A. To tell him what the room was
8 producing.

9 Q. Okay. And then Number 6 is "I told
10 you then and I'm telling you now it is only a
11 two-man operation." What was the purpose of
12 writing that down?

13 A. Because that's all it is, a two-man
14 operation.

15 Q. And Number 7, it says "John and Mike
16 have nothing to do with it. They want to keep
17 you."

18 MR. HIRSCH: "With this."

19 MS. ANDREW: "With this." I'm sorry.

20 Q. We talked about this earlier. "They
21 want to keep you. Can't afford you."

1 time?

2 A. That would have to be at retirement.

3 Q. So what did you do at retirement?

4 A. Usually had some kind of party for
5 them and gave them a little retirement.

6 Q. Okay. Did you consider Mr. Kuehnl a
7 dedicated employee?

8 A. At times.

9 Q. At what times were those?

10 A. Hadn't been for a while. Hadn't been
11 for five or six years.

12 Q. Okay. The last five or six years of
13 his employment?

14 A. Yes.

15 Q. What about loyal? Did you consider
16 him to be a loyal employee?

17 A. Under his own guidelines.

18 Q. What do you mean by that, "under his
19 own guidelines"?

20 A. As long as you did what he wanted.

21 Q. Okay. In terms of giving him work?

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1 When you say "as long as you did what he wanted,"
2 what kind of wants did he express to you?

3 A. He had to have his way.

4 Q. Would an example of having his way
5 mean hire Matt or hire somebody else?

6 A. Yes.

7 Q. Any other examples you can give me?

8 A. As long as you gave him off when he
9 wanted to have off.

10 Q. Okay. And when did he want to have
11 off? What was the deal there?

12 A. He wanted to come and go as he pleased
13 in a lot of cases, not in regular hours.

14 Q. He didn't punch a clock, right?

15 A. No.

16 Q. He wanted to come in irregular hours.
17 What hours did he want to come in?

18 A. Sometimes he'd come in 2:00 in the
19 morning and leave at 10:00.

20 Q. And you didn't want him to come in to
21 work at 2:00 in the morning; is that correct?

1 2:00 in the morning and leave at 10:00 in the
2 morning?

3 A. (Nodding head yes.)

4 MR. HIRSCH: You have to answer the
5 question.

6 THE WITNESS: I told her yes.

7 MS. ANDREW: Yeah. He nodded, but it
8 wasn't --

9 THE WITNESS: I'm not supposed to nod.

10 MR. HIRSCH: Correct.

11 Q. What was wrong with coming in at 2:00
12 in the morning and working until 10:00 in the
13 morning?

14 A. It's bad for the morale of the other
15 employees --

16 Q. Okay.

17 A. -- doing what you want when you want.

18 Q. Was he working, as far as you know,
19 from 2:00 in the morning until 10:00?

20 A. I suppose he did.

21 Q. Okay. I don't want you to guess.

1 What do you base that on? I mean is it
2 possible --

3 MR. HIRSCH: Do you know? If you
4 don't know, say you don't know.

5 A. Do I have it documented, no.

6 Q. Well, did you have any idea what he
7 was doing at 2:00 in the morning at your place of
8 business?

9 A. He said he was either sewing interiors
10 or helping trim caskets or whatever he had to do,
11 but his ulterior motive in a lot of cases were to
12 leave early.

13 Q. Okay. Now, you had no reason to
14 believe that, you know, he was lying about it?
15 I'm not -- you know, coming in the morning to
16 sleep?

17 A. No.

18 Q. So you had no reason to believe he was
19 lying?

20 A. No.

21 Q. But did you tell him it was bad for

1 morale for him to come in at irregular hours?

2 A. At times.

3 Q. And what did he say to that?

4 A. It's the kind of stuff that when you
5 told Fred, he'd give you the silent treatment for
6 a while.

7 Q. He just wouldn't answer you; he'd just
8 clam up?

9 A. I'm talking about for weeks.

10 Q. He would clam up for weeks?

11 A. Yeah.

12 Q. Wouldn't talk to you?

13 A. Right.

14 Q. Did that bother you?

15 A. Of course, it did.

16 Q. Why?

17 A. Do you like to have a working
18 relationship with someone that don't talk to you?

19 ~~MS. ANDREW: Off the record.~~

20 ~~(Discussion off the record.)~~

21 ~~BY MS. ANDREW.~~

1 A. I didn't make that.

2 Q. You did not make that?

3 A. No.

4 Q. Earlier I had asked if you said it,
5 but I didn't give you the date. I didn't give
6 you the exact date. But he said that happened on
7 April 7th.

8 A. What did I ask him?

9 MR. HIRSCH: Objection.

10 Q. "He asked me how old I was and when I
11 was going to retire."

12 A. I knew how old he was.

13 MS. ANDREW: Okay. That's all I have.
14 Do you have any follow-up?

15 MR. HIRSCH: Yes, briefly.

16 EXAMINATION

17 BY MR. HIRSCH:

18 Q. Ms. Andrew just asked you whether or
19 not you said to Mr. Kuehnl on April 7th or you
20 asked Mr. Kuehnl on April 7th how old he was, and
21 I believe your answer was that you did not; is

1 that correct?

2 A. I did not.

3 Q. Do you remember any time in April of
4 2000 asking him how old he was or asking him
5 about his retirement?

6 A. No, I did not.

7 Q. Okay. Ms. Andrew asked you about what
8 you said to Mr. Kuehnl when you terminated his
9 employment.

10 Do you recall at that time telling him
11 that he was too old?

12 A. No. He wasn't too old.

13 Q. And did you say anything like that to
14 him?

15 A. No.

16 MR. HIRSCH: No further questions.

17 MS. ANDREW: Okay.

18 THE REPORTER: Do you want him to read
19 and sign?

20 MR. HIRSCH: Yes.

21 THE REPORTER: And do you want a copy?